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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

DELPHINE ALLEN, et al.,)
Plaintiffs,) No. 00-cv-04599 WHO
vs.)
CITY OF OAKLAND, et al.,) **JOINT CASE MANAGEMENT**
Defendants.) **STATEMENT**
) Date: August 21, 2019
) Time: 3:30 p.m.
) Place: Dept. 2 – 17th Floor
) 450 Golden Gate Ave.
) San Francisco, CA 94102
)
) The Hon. William H. Orrick

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PLAINTIFFS' STATEMENT

2 After years of progress, OPD is backsliding away from full compliance. It is
3 clear that OPD has regressed on multiple fronts, and across several tasks, in the past
4 year. As of the Monitor’s 59th Report dated January 17, 2019, there were only three
5 Negotiated Settlement Agreement (NSA) tasks that were not in compliance or in
6 partial compliance, including Task 5 (Internal Affairs Division (IAD) Complaint
7 Procedures – in partial compliance), Task 34 (Stop Data – in partial compliance), and
8 Task 45 (Consistency of Discipline – in partial compliance). OPD has made no
9 meaningful progress in any of the above-listed Tasks. Worse yet, the Department is
10 no longer in full compliance with Task 2 (Timeliness Standards and Compliance with
11 IAD Investigations), Task 24 (Use of Force Reporting Policy), Task 25 (Use of Force
12 Investigations and Report Responsibility), and Task 30 (Executive Force Review
13 Board—out of compliance). This represents a more than a two-fold increase in tasks in
14 partial-compliance or not-in-compliance since the start of this year.

15 Plaintiffs' will outline their concerns regarding specific NSA tasks, below:

Task 2 (Timeliness Standards and Compliance with IAD Investigations)

18 Task 2 requires that the Internal Affairs Department of the OPD complete
19 internal investigations in a timely manner, and had been inactive since 2015.
20 However, the most recent IMT report determined that “IAD is having difficulty
21 meeting its required timeliness standards”, and OPD was found no longer in
22 compliance with this task. (62nd IMT Report, p. 2)

23 Specifically, OPD policy requires that “at least 85% of Class I misconduct
24 investigations and at least 85% of Class II misconduct investigations must be
25 completed within 180 days to be considered timely”. Per DGO M-03, Class I offenses
26 “are the most serious allegations of misconduct and, if sustained, shall result in
27 disciplinary action up to and including dismissal and may serve as the basis for

1 criminal prosecution.” Class II offenses include “all minor misconduct offenses.” (62nd
 2 IMT Report, p. 3)

3 The IMT reviewed 14 Class I cases during the period covered by the most recent
 4 (62nd) IMT report, and determined that only four of these cases were completed
 5 within the required timeline (one of which, it should be noted, was completed on the
 6 180th – very last – day). This represents a 29% success rate, which is 56% short of the
 7 compliance threshold.

8 Similarly, the 30 Class II cases reviewed by the IMT, only seven were in
 9 compliance with established timelines. This represents a 23% compliance rate with
 10 IAD policy, which is 62% short of the compliance threshold.

11 Plaintiffs’ are baffled by the very low timeliness rates at a time when the
 12 number of serious complaints has dropped substantially. Per the most recent (241st)
 13 biweekly report received from the Office of the Chief of Police, there have been 41
 14 fewer complaints to date in 2019 than in 2018. It therefore appears that IAD is
 15 completing only a fraction of their investigations within the 180 day time limit at a
 16 time when there are fewer total complaints. The OPD has not provided a reasonable
 17 explanation for these abysmal IA completion rates.

18 Finally, OPD Departmental General Order M-03, Complaints Against
 19 Department Personnel and Procedures, requires that “in cases with a sustained
 20 finding, the discipline recommendation process shall be completed within 30 calendar
 21 days of the sustained finding.” The IMT reviewed all cases that involved sustained
 22 findings during the reporting period, and determined that one case was not in
 23 compliance with this required discipline timelines.

24 On August 12, 2019, Plaintiffs’ counsel received a Memorandum from Lt.
 25 Sansome to the Chief of Police, as well as an e-mail from Chief Kirkpatrick stating
 26 that “we do not have a backlog anymore in IA.”

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1 The Memorandum from Lt. Sansome says:

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3 “In an effort to eliminate the backlog, and through the use of overtime, thirteen
4 sergeants and lieutenant from both inside and outside IAD were tasked with
conducting the reviews. These reviewers were in addition to the regularly
assigned DLI Coordinators and were trained by me to conduct the reviews.
5 Most had prior IAD experience.”

6 Plaintiffs’ attorneys look forward to the Monitor/Compliance Director’s review of
7 this effort

8 to see if it was done properly or not in order to ensure that these reviews were
9 comprehensive and in compliance with the guidelines for Task 2, as well as the other
10 provisions of the Negotiated Settlement Agreement. It is also hoped that the City will
11 address why this backlog was created in light of the City’s agreement to abide by Task
12 2 and what permanent steps will be taken going forward to comply with Task 2 in the
13 future.

14

15 **Task 5 (Complaint Procedures for IAD)**

16 OPD had been in partial compliance with Task 5, which pertains to Complaint
17 Procedures for the Internal Affairs Division, since the 21st Reporting Period (May
18 2015). On March 23, 2016, the Court issued an Order indicating that irregularities
19 and potential violations of the NSA occurred in IAD investigation 15-0771. The Order
20 noted that the investigation raised issues of accountability and sustainability of
21 compliance. During the previous reporting period, covered by the 61st IMT Report, the
22 Monitor determined that OPD was “not in compliance” with Task 5. (61st IMT Report,
23 p. 16). The Department was, however, in compliance with some sub-paragraphs of
24 Task 5, including subtasks 5.1 to 5.5, and subtasks 5.6 to 5.12.

25 The IMT’s concerns centered on Task 5.18 (which requires that OPD resolve
26 each allegation in a complaint investigation using the preponderance of the evidence
27 standard) and Task 5.19 (which requires that each allegation of a complaint is

1 identified and resolved with one of the following dispositions: unfounded; sustained;
 2 exonerated; not sustained; or administrative closure). The IMT reviewed 19 such
 3 cases, and disagreed with the findings in two of the cases. One case involved the
 4 mishandling of evidence where the “investigator’s case substantiated untruthfulness
 5 on the part of a subject officer – and the officer was deemed not credible – but the
 6 investigator arrived at a finding of not sustained. After we reviewed this case with
 7 OPD, the Department changed the finding.” (61st IMT Report, p. 7)

8 The second case highlighted by the IMT centered on an allegation that an officer
 9 stopped and searched a citizen without cause, and pointed his firearm at the citizen
 10 during said encounter. OPD determined that the “stop and detention were exonerated,
 11 but [the IMT believes] there was no justification for the stop and findings of sustained
 12 are appropriate. Additionally, the pointing of a firearm was unfounded, but the more
 13 appropriate finding is not sustained. The investigator based this latter finding on the
 14 complainant’s cell phone video, but the video did not capture the entirety of the
 15 encounter and the officer did not have his PDRD as required by policy.” (61st IMT
 16 Report, p. 7).

17 It seems obvious that the Internal Affairs process would have a better chance of
 18 compliance if the OPD and the City of Oakland had a more harmonious relationship
 19 with the new Oakland Police Commission. This Commission will have the final say on
 20 nearly all complaints against Oakland Police officers. As such, its smooth operation
 21 could greatly help the OPD’s quest to obtain compliance on Task 5.

22 Unfortunately, the relations between the City Administrator’s Office, the City
 23 Attorney’s Office, and the Police Commission have not been good. The Administrative
 24 Analyst for the Police Commission usually fails to attend Commission meetings and is
 25 supervised by the City Administrator’s Office, not by the Commission Chairperson.
 26 The City Attorney’s Office, who has a fiduciary obligation to represent the Police
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1 Commission, has directed the interim CPRA Director to withhold the responses to the
 2 Commission's issued subpoenas from the Commission.

3 There are still a significant number of Commission employees' positions that
 4 have not been filled. Only four Commissioners (out of a total of nine commissioners
 5 and alternates) have received the required training to allow them to be a member of a
 6 Discipline Committee which means that the unavailability of just two Discipline
 7 Committee members would cause the Police Commission to be unable to fulfill one of
 8 its most important functions, and potentially cause the City to violate the one year
 9 deadline imposed by Government Code 3304 to impose discipline on police officers.

10 This is just a brief summary of the problems between the Police Commission
 11 and the City Bureaucracy. Plaintiffs' attorneys note the continued inability of the City
 12 of Oakland/OPD to comply with Task 5 which is one of the most important tasks of the
 13 NSA. It is very likely that the Police Commission, instead of being perceived as a
 14 problem, could actually be brought in to find solutions to the chronic inability of the
 15 OPD to comply with Task 5.

16

17 **Tasks 24 (Use of Force Reporting Policy) & 25 (Use of Force**
 18 **Investigations and Report Responsibility)**

19 OPD had been in compliance with Tasks 24 (Use of Force Reporting Policy) and
 20 25 (Use of Force Investigations and Report Responsibility) of the NSA since 2015. In
 21 November 2018, this Court reactivated these Tasks as a result of Plaintiffs' and the
 22 Monitoring Team's concerns about Use of Force Reporting procedures at OPD. In the
 23 previous (61st) IMT Report, the Monitor found that OPD was only in partial
 24 compliance with these tasks, and expressed "serious concerns with the Department's
 25 handling and investigation of recent uses of force." (61st IMT Report, p. 16).

26 Plaintiffs' have elaborated their concerns in this regard at great length
 27 previously. To summarize: the City of Oakland had touted decreasing use of force
 28

1 levels by members of the Oakland Police Department as an example of cultural
 2 changes within the Department. According to the 56th IMT report, uses of force data
 3 between 2012 and 2017 dropped 75%, and as of October 6, 2018, reported force data
 4 indicated an additional decrease of 23%. However, beginning in October 2018, OPD
 5 Use of Force rates spiked upward. The Oakland Police Department's own Office of
 6 Inspector General (OIG) previously attributed these significant increases to a
 7 command level decision to direct additional lineup training on pointing of a firearm.

8 Plaintiffs' attorneys therefore reported to this Court that Use of Force incidents
 9 had, apparently, been systematically underreported for years, in a manner
 10 incongruent with the Department's own written policies, and demanded that a
 11 comprehensive investigation must be undertaken to identify the root causes of this
 12 problem. (November 16, 2018 Case Management Statement, Dkt. No. 1221).

13 More recent IMT Reports suggested there were other recent Uses of Force that
 14 were not reported besides the pointing of a firearm at a person. For example, the 57th
 15 IMT report highlighted a number of cases where "it is unclear whether force was used
 16 and/or there is no actual video of the arrest" (page 2, 57th Report). On November 14,
 17 2018, the IMT provided follow-up information regarding the 57th IMT Report to
 18 Plaintiffs' attorneys, the Chief of Police, and the City of Oakland which indicated that
 19 they reviewed over one hundred (100) police reports. The IMT subsequently requested
 20 body camera footage for 38 selected videos containing possible charges (such as assault
 21 on an officer, obstructing, resisting arrest, etc.) that had no accompanying use of force
 22 report. After reviewing the videos, the IMT determined that in 14 cases that were
 23 reviewed, officers used force without completing a use of force report. Six of those
 24 incidents involved the use/pointing of a service weapon, and eight others contained
 25 force other than the pointing of a firearm. This means that more than half of the
 26 unreported Use of Force incidents that the IMT recently discovered could not be
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1 attributable in any way to confusion about the wording regarding the low
 2 ready/retention position in General Order K-4.

3 Last month, OIG released a damning report that indicated officers'
 4 systematically under-reported use of force incidents.¹ Specifically, uses of force
 5 involving weaponless defense techniques and pointing of a firearm at a subject were
 6 not always being reported in accordance with Department policy and procedures. (OIG
 7 Report, p.2).

8 The OIG Audit identified five incidents of unreported weaponless defense
 9 techniques (i.e., hand/palm/elbow strikes; kicks; take-downs; leg sweeps; arm-bar
 10 takedown; and control holds such as escort via elbow, bent wrist, twist lock, and arm-
 11 bar hammerlock). One incident involved a takedown of a handcuffed subject, which
 12 was considered a Level 3 use of force but, per policy, should have been investigated as
 13 a Level 2 use of force, requiring review by the Force Review Board. Further, no use of
 14 force was even reported by the subject officer. The OIG audit also found four other
 15 incidents where Level 3 Uses of Force were unreported.

16 Plaintiffs' are especially alarmed by OIG's determination that "the percentage of
 17 African American subjects of force that went unreported is higher than the percentage
 18 of African American arrestees." (p. 2, OIG Audit) Of the five above-described incidents
 19 where reportable uses of force were not reported, four of the subjects of force (80%)
 20 were African American, and the other (20%) was Hispanic.

21 Similarly, there were 19 incidents where OPD Officers did not report pointing
 22 their firearms at a subject, even though OPD policy mandates that this is a reportable
 23 Use of Force. 17 of these 19 incidents (89%) involved an African-American subject,
 24 while the other two (11%) involved Hispanic subjects. (OIG Report, p. 15).

25 Put another way: **In every instance where the OIG Audit determined that
 26 officers did not properly report Use of Force, the subject of the unreported**

28 ¹ <http://www2.oaklandnet.com/oakcal/groups/police/documents/report/oak072446.pdf>
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1 **force was either Hispanic or African American.** This is outrageous and
 2 unacceptable. Chief Kirkpatrick, in her response to the OIG report, claims that OPD
 3 “officers’ patience and professionalism in their community interactions reflect the
 4 cultural change within the Department.” (Kirkpatrick Response, p. 2). It is
 5 unfathomable that anybody, especially the Chief, could describe the OIG’s findings in
 6 this regard as evidence of positive “cultural change” or progress.

7 The OIG Report also determined that four OPD squads had “more than one
 8 incident involving an unreported use of force” – including both firearm-pointing and
 9 weaponless defense technique incidents – in 2018. (OIG Report, p. 13) Two of the
 10 four squads were patrol squads, and the other two were specialized units that “focus
 11 on crime reduction...and apprehension of high-risk suspects.” Further, data obtained
 12 from the Personnel Assessment System (PAS) Unit indicates that “12 of the 43 officers
 13 and sergeants assigned to these four squads were under supervisory monitoring at
 14 some point during 2017-2018.” (OIG Report, pp. 13-14)

15 One of the Plaintiffs’ attorneys has attended multiple Risk Management
 16 Meetings with OPD command staff where officers and sergeants undergoing
 17 supervisory monitoring are discussed. In some instances, partnered officers who have
 18 outlying use of force statistics have been split up, to some effect. The same stop data
 19 and use of force data that is reported and discussed in these meetings has apparently
 20 resulted in supervisory monitoring for 12 out of these 43 officers in the subject squads.
 21 Given the extreme racial discrepancies among subjects of unreported use of force
 22 described above and in the OIG report, Plaintiffs’ attorneys were going to ask the court
 23 that it order OPD commanders to again review this data, and either break up the four
 24 squads listed in the OIG report or provide a compelling reason for not doing so.

25 However, Plaintiffs’ attorneys have recently learned that the subject squads
 26 have indeed been broken up. This is obviously a positive development. However, the
 27 issue remains as to when and why they were broken up. Were they broken up only
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1 after the publication of the OIG report? Were they broken up only after the yearly
 2 rotation of almost all personnel at the OPD? If so, this could very well mean that the
 3 RMM process failed to realize the gravity of the situation, supervisory monitoring
 4 became an end in itself, and decisive action was not taken until the subject behavior
 5 became so well publicized that commanders had no choice to take action. Were these
 6 squads only broken up after one or more of them were involved in a major incident
 7 that could have been avoided if they were broken up earlier? If so, this indicates a
 8 failure of the RMM process in that outliers are identified in a timely and appropriate
 9 way, but nothing is done about it until the subject squad is involved in an unfortunate
 10 incident that could have been avoided if they had been broken up in a timely way after
 11 their problems were identified.

12 While the Maricopa County injunction requires supervisory monitoring be
 13 videotaped and reviewed by all the parties, OPD's supervisory monitoring is not
 14 videotaped and, as far as Plaintiffs' Attorneys can recall, has never been monitored by
 15 the IMT. We simply have no way of knowing if supervisory monitoring in Oakland is
 16 effective , whether supervisors are just "going through the motions", or something in
 17 between. Plaintiffs' attorneys strongly urge the Court and the Monitor/Compliance
 18 Director, at a minimum, to observe some of the supervisory monitoring, and report on
 19 whether it is effective or not. Plaintiffs' attorneys hope this will resolve the issue of
 20 whether the supervisory monitoring accomplishing its goal. However, Plaintiffs'
 21 attorneys cannot rule out asking that most, if not all, supervisory monitoring be
 22 videotaped in the future.

23 The Department must also hold the supervisors who oversee these squads
 24 responsible for their leadership shortcomings. Per the OIG reports findings regarding
 25 the four squads with more than one incident involving an unreported use of force, it
 26 does not appear that this specific failure was distributed evenly across the
 27 Department. Instead, the four squads described are evidently outliers within the
 28

1 Department. Supervisors, up through and including the command staff at OPD, must
 2 be held accountable.

3 Plaintiffs' also note that the Department has repeatedly emphasized that all of
 4 the unreported uses of force described within the OIG report were nevertheless within
 5 policy. Without viewing all of the underlying data and video pertaining to these stops,
 6 Plaintiffs' cannot independently reach the same conclusion. However, even if this is
 7 the case, the very fact that certain squads have multiple incidents involving
 8 unreported use of force, and that **all** of the subjects of unreported use of force are
 9 African American or Latino, suggests that officers may be using the maximum use of
 10 force allowed per Department policy on minority subjects, while subjecting non-
 11 minority populations to less force, or no force at all, in similar circumstances. If this is
 12 true, the subject OPD behavior is unconstitutional, whether or not it is in policy. OPD
 13 management must examine this issue immediately to make the relevant
 14 determination on these issues and take decisive action as warranted.

15 Finally, the Department must also review and explain the basis for the stops
 16 that led to unreported uses of force. Plaintiffs are curious to know whether or not such
 17 stops were "intelligence-led", and whether intelligence-led stops are more or less likely
 18 to result in unreported uses of force.

19

20 **Task 30**

21 Task 30 (Executive Force Review Board) was found to no longer be in
 22 compliance in March 2019, after being in compliance since 2014.

23 Task 30, which covers Executive Force Review Boards (EFRBs), requires that
 24 three top command-level staff conduct "thorough, detailed reviews of all Level 1 uses
 25 of force, in-custody deaths, and vehicle pursuit-related deaths and serious injuries."
 26 As with Task 2, OPD achieved compliance with task many years ago (during the April
 27

1 to June 30, 2014 reporting period). And as with this Task 2, the Department has
 2 fallen out of compliance with this task in 2019.

3 The Monitor reports that it determined the OPD was not in compliance with
 4 Task 30 “based on the last EFRB conducted”, but does not elaborate beyond that. This
 5 EFRB pertains to the shooting death of Joshua Pawlik.² An executive Force Review
 6 Board was convened to review this officer-involved shooting incident in November
 7 2018.

8 Per the EFRB report that emanated from this hearing, the EFRB “agreed with
 9 Criminal Investigation Division (CID) and Internal Affairs Division (IAD)
 10 investigators that all the uses of force during this incident (four Level 1 uses of force
 11 and one Level 2 use of force) were reasonable under law and in compliance with
 12 policy.” (EFRB Report, page 4.)

13 An addendum to this report was subsequently issued by Chief Kirkpatrick in
 14 February 2019. In this document, the Chief reiterated that “after a careful review and
 15 analysis of all of the evidence and the application of the Fourth Amendment’s objective
 16 reasonableness test, I agree with the recommendation of IAD and the unanimous
 17 decision of the EFRB that the force used was within law and policy.” (Chief’s
 18 Addendum – UOF No: 18F-0067 -- Page 3).

19 Compliance Director Warshaw issued a further addendum to the EFRB report
 20 one week later, on February 19, 2019. Chief Warshaw noted that “IAD and CID are
 21 required... by Department policy [and] by the Negotiated Settlement Agreement
 22 (NSA)” to resolve discrepancies between officers assertions about the scene and the
 23 events culminating in the officer-involved shooting and contrary video evidence and
 24 testimony. He determined, however, that “investigators – both in their questioning
 25 and analysis – failed to address the inconsistencies between officers’ statements and

27 ² Note: John Burris has not participated in any discussions with the Police Commission, the OPD,
 28 or the Monitor where confidential matters pertaining to the Pawlik case have been discussed.

1 the video evidence.” (Compliance Director Robert Warshaw’s Addendum to OPD EFRB
 2 Report – page 1).

3 Chief Warshaw also determined that “EFRB members did not address the
 4 apparent discrepancies between the statements and the video. With respect to the
 5 uses of force, the EFRB members appeared to accept IAD’s recommendations at face
 6 value. The board was duty-bound to resolve those discrepancies if IAD did not.
 7 However, the board failed to do so.” He concluded that Chief Kirkpatrick’s assessment
 8 of the totality of the circumstances was “disappointing and myopic”, and rejected Chief
 9 Kirkpatrick’s principal conclusions in this matter. (Compliance Director Robert
 10 Warshaw’s Addendum to OPD EFRB Report – page 2).

11 On June 13, 2019, the Oakland Police Commission, a civilian-led body that is
 12 tasked with overseeing the Oakland Police Department, established a Discipline
 13 Committee to review the circumstances of the officer-involved shooting and proposed
 14 discipline related to the Pawlik matter. This Committee consisted of Commission
 15 Chair Regina Jackson, Commissioner Jose Dorado, and Commissioner Edwin Prather.
 16 It should be noted that two of these three commissioners were appointed directly by
 17 Mayor Schaaf and are not community appointees.

18 The committee concluded that PDRD footage from the scene of the officer-
 19 involved shooting “confirms that at no time did Mr. Pawlik raise the handgun towards
 20 the officers or otherwise in a threatening manner towards the officers.” (Oakland
 21 Police Commission Report, p. 5) Further, the Committee “does not find persuasive
 22 Officer testimony that Mr. Pawlik lifted, moved, or pointed the handgun in a
 23 threatening manner towards Officers.” (Oakland Police Commission Report, p. 5)
 24 Based on these conclusions, the Committee sustained *MOR 370.27 – If Use of Physical*
 25 *Force* violations against four officers and one sergeant, and concluded that termination
 26 was the appropriate discipline for each of these officers.

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1 This represents the first time that both the Compliance Director and the Police
 2 Commission overruled any OPD Chief on a discipline matter. Indeed, the Oakland
 3 Police Commission is a wholly independent body, separate from the IMT. That both
 4 the IMT and the Police Commsision arrived at fundamentally similar conclusions, in
 5 stark contrast to those of the EFRB and Chief Kirkpatrick, illustrate why OPD is no
 6 longer in compliance with Task 30 of the NSA.

7

8 **Other Concerns Pertaining to the NSA**

9 Plaintiffs' have concerns beyond just those outlined above. Most prominently,
 10 the above-referenced OIG Report determined that OPD officers were not complying
 11 with long-standing PDRD policies. OIG reviewed 47 incidents that were likely to
 12 involve force, and in which the arrests were likely to have involved use of force. Of
 13 these 47 incidents reviewed, 18 incidents (involving 31 officers) involved "officers not
 14 complying with PDRD policy requirements." (OIG Report, p. 2). Similarly, in the 17
 15 incidents where OIG determined that force was underreported, seven "involved
 16 officers not complying with PDRD policy requirements." (OIG Report, p. 16).

17 This once again raises issues of supervisory control within OPD. It also begs
 18 the question: is it just a coincidence that incidents where force was underreported
 19 were also incidents where PDRD policy was not followed? The alternative, more
 20 sinister, possibility is that such policy violations are correlated because officers are
 21 intentionally violating Departmental PDRD policy prior to using unreported force on
 22 minority subjects. Without casting aspersions on these specific officers (again,
 23 Plaintiffs have not seen the underlying documentation, incident reports, etc.),
 24 Plaintiffs' note that this fact pattern is extremely troubling. It demands a timely and
 25 thorough investigation.

26 More generally, it is simply unacceptable that OPD personnel are not using
 27 PDRDs as prescribed by policy. Every failure to do so is detrimental to all

1 stakeholders in this process, including officers, the general public, and the OPD
 2 command staff. As noted in the OIG report, OPD cannot fully investigate incidents,
 3 identify training and tactical issues, or review police procedures when PDRD footage is
 4 unavailable. It also undermines public trust in the Department.

5 The OIG Report also found issues with reports involving “boilerplate” language.
 6 OIG concluded that “these issues should have been identified by supervisors and
 7 reviewing commanders through a critical, in-depth review of the incident
 8 documentation.” (OIG Audit, p. 4) This, too, points to supervisory shortcomings
 9 within the Department, and is unacceptable.

10 Plaintiffs’ remain concerned about the issues recently raised by the Oakland
 11 Black Officers Association (OBOA) concerning disparate treatment for African
 12 American recruits and trainees at OPD. Plaintiffs’ have not received a satisfactory
 13 explanation for the charges outlined in their March 13, 2019 “Open Letter to City
 14 Administrator. This letter claimed that the OBOA went to Chief Kirkpatrick and
 15 accused the Background and Recruiting Commander of discriminating against new
 16 and potential African American recruits in a variety of ways, including applying
 17 biased standards such as rejecting qualified minority candidates for very minor issues
 18 and considering candidates who had used illegal drugs more commonly used by
 19 Caucasians, while automatically rejecting candidates who had used comparable illegal
 20 drugs more common in the African American community.

21 Director Gleason subsequently reviewed the applications of rejected individuals
 22 and, as a result, sent an email to Plaintiffs’ attorneys, Chief Kirkpatrick, Chief
 23 Warshaw, and Mayor Schaaf reporting that “about 20 applicants were returned into
 24 background processing from the first review. Some of the applicants made it to a final
 25 job offer, others did not.”

26 After further discussions with Plaintiffs’ attorneys, Darlene Flynn (the Director
 27 of the Department of Race and Equity for the City of Oakland) was brought in to
 28

1 consult with Director Gleason about other rejected applications, in order to determine
2 whether a basis existed for hiring even more of the candidates who had originally been
3 rejected. Plaintiffs' look forward to hearing what progress that is made in this
4 endeavor.

5 Despite the above developments, there has been no follow up meeting of
6 stakeholders to see where to go from here. It is clear from the review of Director
7 Gleason that the OBOA complaints had some validity since her review resulted in
8 additional people being hired who had previously been deemed unqualified. There
9 needs to be a more broad based agreement on how to review these applications that
10 involves the Oakland Black Officers Association and other interested parties. So far,
11 no such meeting on this issue has been scheduled. Plaintiffs' attorneys will continue
12 to press for such a meeting so there can be a bias free selection process that is
13 approved by all the relevant stakeholders.

14 Plaintiffs' attorneys have been in contact with Captain Millington on the
15 Disparity Study. Captain Millington has informed us that an anonymous survey has
16 been sent out to all sworn members of the Department as promised. A draft report of
17 the study is expected within two or three weeks. Plaintiffs' attorneys expect to
18 comment on the report in the next Case Management Conference Statement.

19 Finally, Plaintiffs' attorneys have not received any word as to the progress of
20 Vision (Prime). We recall that the City Attorneys represented that there would be
21 significant developments with regard to the Vision system by the time of this Case
22 Management Conference. However, we have not been informed of any such
23 developments.

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JOINT CASE MANAGEMENT STATEMENT (C 00-04599 WHO)

CONCLUSION

Just one year ago, OPD was close to achieving meaningful reform and concluding the NSA process. Instead of continued forward momentum, progress has stalled, and the Department is moving backwards. OPD is moving ever farther from achieving compliance. The number of outstanding NSA tasks has jumped from three to seven in a handful of months. The Compliance Director has overruled an EFRB on a death case for the first time in the history of the Negotiated Settlement Agreement, and the Oakland Police Commission independently came to a similar conclusion in the same matter. The OIG Report reveals that OPD has routinely under-reported uses of force, and that the victims of this underreporting are exclusively African American and Hispanic. OPD officers are not complying with well-established PDRD policies, and there are widespread supervisory failures within the Department.

Plaintiffs' attorneys find the current situation intolerable. In a similar situation in 2012, we filed a motion to put the OPD in Receivership. The settlement of our motion at that time resulted in the creation of a Compliance Director who had the power to force widespread change on the Oakland Police Department. If the OPD is unable to reverse this backwards slide away from compliance, the Compliance Director should take decisive and appropriate action to bring the OPD into compliance. Whether this action involves personnel actions delegated to the Compliance Director, policy and rule changes, or both, the appropriate action must be taken. The OPD must be brought into compliance with the NSA by any necessary lawful means.

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THE CITY'S STATEMENT

OVERVIEW

Since the last CMC, the Department has made yet further progress. A day at the Department lays bare the lasting cultural transformation that is underway. It is plain in how the Department sees itself, spends its resources, messages its values, manages risk, trains its officers, enhances its policies, hands down discipline, and takes honest looks inward.

Law enforcement's historical inequities weigh heavily in Oakland and across the nation. NSA or not, equity is a core value of the City. And its leaders will continue to lay the infrastructure and shape the culture that drives progress towards equitable, constitutional policing.

With all this in mind, the City addresses the following topics:

- The City's Race & Equity work
- OIG's *Special Report*
- Tasks 2, 5, 24, 25, 30, 34 (including VISION), and 45

First, Chief Kirkpatrick invited the City's Department of Race & Equity to work with the Police Department to make further gains towards equity within the OPD itself and within its community interactions. The first major project was a 15-hour training and problem-solving workshop that the entire Executive Team attended.

Second, OIG released a *Special Report* on force reporting. Some findings were disappointing. But the report shows that the Department caught and swiftly corrected a reporting problem stemming not from failing structures or corrupt culture, but from policy and training ambiguities. As when the IMT looked at this issue, OIG's findings did not show that officers used unwarranted force.

Third, as to the outstanding tasks, City is well past the finish line as to some, and as to others, the City is breaking the plane:

- As for Task 2, the City has long been in compliance with that task. Unfortunately, there was a recent case backlog, which the Department has cleared. All along, though, the Department has stressed high-quality investigations over checking-the-box. And the City is not aware that there was any missed opportunity to impose discipline. OIG will audit this issue to better understand what happened and to help prevent a future backlog.
- As for Task 5, the City has implemented all the Court Investigator's recommendations. Further, in the last three reviews going back to the IMT's 56th Report, the IMT has agreed with the way the Department assessed 94% of the cases the IMT studied.
- The approval rate is the same for Task 30. The IMT has praised 17 of the last 18 EFRBs it reviewed. The Department's EFRB process is not deficient. The City welcomes the Court to observe any EFRB—without notice.
- As for Task 34, the City is ahead of the curve in collecting stop data and using it to reduce disparities. Also, the City is on the cusp of implementing all 50 Stanford recommendations.
- As for Task 45, the City has implemented the Court Investigator's recommendations. And the IMT's last two reviews were positive. bottom, the City is focused on the future, sustainability, and further For many years now, the City has been “in compliance” with most tasks. City seeks guidance on the compliance metrics for those that are outstanding.

RACE & EQUITY WORK

In October 2016, the City launched the Department of Race & Equity. The point is to “create a city where our diversity has been maintained, racial disparities

1 have been eliminated and racial equity has been achieved.” See Dept. of Race &
 2 Equity (<https://www.oaklandca.gov/departments/race-and-equity>). As Darlene
 3 Flynn, the Director, explains, “[e]quality works when everyone starts from the same
 4 place. Equity is fairness. It's ensuring that people have access to the same
 5 opportunities or services we administer or deliver, directly or by contract.” *Id.* A core
 6 principle is that closing equity gaps in this context must come from strategies
 7 developed through a focus on race.

8 Police services are no different. The Department has made important strides,
 9 sharply reducing its overall stops of African Americans and using stop data to drive
 10 policies, strategies for delivering services, and risk management. To help build on
 11 these efforts, Chief Kirkpatrick invited Race & Equity to work with the Department.

12 The first joint project was a 15-hour training of the Police Department’s entire
 13 Executive Team. Lieutenant Frederick Shavies and Director Flynn designed and
 14 delivered the training focusing on racial inequities in law enforcement, going back to
 15 when police departments were first formed, the civil rights era, and up through today.
 16 The training also examined historical practices within departments that placed
 17 different groups of officers on uneven careers tracks. The sessions were powerful and
 18 geared towards problem-solving. *Please see Ex. A, Training Slides excerpts.* The next
 19 step is to roll out the training through the rest of the Department.

20 The Department is also consulting with Race & Equity to rework its
 21 recruitment system to capture all qualified candidates. To that end, the Department
 22 recently did a second review of candidates who were not selected to move forward in
 23 the hiring process. As a result, over 40 candidates were reactivated in that process.
 24 As these efforts to increase diversity among sworn and civilian personnel continue, the
 25 Department will include the Oakland Black Officers Association, the Asian Police
 26 Officers Association, and the Latino Police Officers Association. Planning for those
 27 discussions is underway.

1 Further, the Department is preparing a campaign to recruit more women. At
 2 the same time, the Department is reassessing its hiring and training processes to
 3 ensure that they do not screen out qualified women. Along the same lines, the
 4 Department is reimaging its entire Academy program with an eye towards training
 5 practices that advance equity outcomes and retaining qualified recruits.

6 Finally, as the City noted in its last statement, the Department hired an outside
 7 firm to study whether there are any disparities in how it has investigated and
 8 disciplined officers within the past five years. The selection process was
 9 collaborative—including input from Mr. Burris and Race & Equity.

10 The study is moving full steam ahead. The firm is mining information from
 11 records, quantitative outcome data, and officers themselves (with anonymity
 12 safeguards in place). By the next CMC, the City aims to discuss at least preliminary
 13 findings.

14

15 **OFFICE OF THE INSPECTOR GENERAL'S *SPECIAL REPORT***

16 OIG continues to play a key role in helping the Department keep its practices
 17 true to its values. Last month, OIG published a report focusing on the following
 18 questions:

- 19 1. Is force being properly reported?
- 20 2. Are officers complying with the body-camera policy?
- 21 3. Is there appropriate supervision during arrests that may carry a
 higher chance of involving force?
- 22 4. What is the racial breakdown of force underreporting?
- 23 5. Is the Department catching Manuals of Rules violations?

24 See Ex. B, *Special Report* (July 30, 2019); Ex. C, *Command Response* (July 26, 2019).

25 OIG examined these issues after errors in force reporting started to surface last
 26 year. Right away, the wording of certain policies stood out as a root cause. OIG's
 27

1 report confirms this is the case. The Department did not wait for OIG's final report to
 2 start rewriting these policies or to take other steps to bake enhanced force reporting
 3 into the Department's rules and culture.

4 **I. OIG'S FINDINGS**

5 In the audit, OIG pared down a large pool of 2018 incidents—all which were
 6 more likely to involve force—to 47. In the final cut, there were three groups of
 7 incidents: (1) 14 from January 2018 to June 2018 in which the IMT found
 8 underreporting, (2) 17 from July 2018 to November 2018, and (3) 16 from all of 2018
 9 involving squads that came up in the first two groups.

10 **A. There Was No Unreasonable Force**

11 To start with, OIG found no case of an officer using unreasonable force. That is
 12 line with the IMT's findings that it "found no instance where the force used was
 13 unwarranted or inconsistent with policy, and as previously reported, we found several
 14 instances where officers exhibited considerable patience and understanding, even
 15 though they were often faced with significant verbal abuse." Dkt. No. 1224, at 3, *58th*
 16 *Report* (Nov. 28, 2018).

17 Given that force was a main reason for entering into the NSA, this fact is
 18 concrete evidence of cultural transformation.

19 **B. There Were Policy, Training, And Supervisory Shortfalls**

20 OIG found, though, that in 17 incidents, officers failed to fill out use-of-force
 21 forms when they should have done so. Five of the 17 involved weaponless defense
 22 techniques, such as takedowns, and 12 involved firearm pointing. Among other strong
 23 measures, the Department rewrote the polices on reporting both force types. Further,
 24 OIG referred all 17 incidents to Internal Affairs.

25 In addition, OIG found that in 18 incidents, not every officer complied with the
 26 body-camera policy. Some officers turned on their cameras later than the policy
 27 requires or not at all. OIG further found that supervisors failed to catch these errors

1 and eight other potential Manual of Rules violations. This conduct was thus not
 2 reported to Internal Affairs. But OIG then did so, ensuring that there is
 3 accountability. Lastly, in the very small sample size—too small to draw any statistical
 4 conclusions—the percentage of African Americans who were arrested was lower than
 5 the percentage of underreported force against African Americans.

6 II. THE DEPARTMENT'S RESPONSE

7 In its report, OIG made 12 sound recommendations. Some prescribe the same
 8 corrective actions the Department had already began taking. And the Department is
 9 adopting the others.

10 Here are the recommendations:

11 NO. RECOMMENDATION

12	1	Revise General Orders K-3 (Use of Force) and K-4 (Reporting and Investigation the Use of Force)
13	2	Reinforce the body-camera policy
14	3	Provide additional training to supervisors and commanders on how to review incidents that are more likely to involve force
15	4	Equip all officers with body cameras
16	5	Codify Special Order 9191
17	6	Incorporate technology that tracks firearm unholstering
18	7	Reinforce procedural justice training
19	8	Adopt a Train-the-Trainer course
20	9	Enhance training to specialized units
21	10	Clarify command and supervisor responsibility for Special Resource Section Teams
22	11	Officers working outside the normal assignments should complete in-custody offense reports before their shift ends and submit them to the appropriate supervisor for review
23	12	Next year, OIG should audit to track the Department's progress in these areas

1 **A. Key New Policies Are In Place And Others Are On The Way**

2 To begin with, the Department has worked closely for months with the Police
 3 Commission to enhance key policies on force reporting. The rewrites—set forth in
 4 Special Order 9196—change General Orders K-3 and K-4 to make clear the types of
 5 force that must be reported, including firearm pointing. At the August 2019 site visit,
 6 the IMT plans to comment on the Commission’s latest edits. *See Ex. D, (Draft) Special*
 7 *Order 9196.*

8 Here are some of the key changes:

- 9 ➤ Striking subjective language—such as “intentional” and “low and ready”—
 10 that could lead to uncertainty about when officers must report firearm
 11 pointing
- 12 ➤ Redefining “takedowns” to mean “physical force used by a member to cause a
 13 person to go to the ground not under their control”
- 14 ➤ Clarifying when injuries trigger reporting
- 15 ➤ Reclassifying certain force

16 In addition, the Chief issued Special Order 9191 requiring supervisors to review
 17 body-camera footage when officers report that a person threatened an officer, resisted
 18 arrest, or battered an officer.³ Those types of incidents may be more likely to involve
 19 force. *See Ex. E, Special Order 9191.*

20 **B. The Department Is Clearly Messaging Its Expectations,
 21 Retraining Its Officers, And Holding All Within Its Ranks
 22 Accountable**

23 Meanwhile, the Department has already retrained officers on certain fronts,
 24 including on how to report firearm pointing. Also, the Department has strongly
 25 messaged its reporting expectations. All this has been effective. Reported force in
 26 July 2019, for instance, was up four-fold compared to the same time last year.

27 ³ The specific laws are Cal. Penal Code §§ 69 (obstructing or resisting executive officer), 148
 28 (resisting, delaying, or obstructing), and 243(b),(c) (battery on a peace officer).

1 Strong messaging that reverberates up and down through the ranks is key. The
2 reporting increase is proof. Another example is probation and parole searches. Even
3 though the new policy on those searches has not yet taken hold—it is on the verge—
4 messaging and retraining has led to a sharp drop in those searches from 3,856 in 2016
5 to 1,817 in 2018.

6 The Department has also taken swift action concerning the body-camera
7 findings. The Department is proud that it adopted body-cameras early on and that it
8 uses footage to enhance policies, procedural justice, and self-oversight. The
9 Department is actively reinforcing its deep body-camera culture and practices. Among
10 other things, the Department is training supervisors to identify certain words in
11 reports—such as “guided” or “assisted to the ground”—to make sure the officers they
12 supervise are reporting force and complying with the body-camera policy; making new
13 recruits wear body-cameras from the time they start the Academy; and handing down
14 progressive discipline when officers fail to comply with the policy, recently suspending
15 a senior officer for 30 days for such a violation.

16 Further, the Department has equipped all officers and sergeants in field
17 operations with body cameras and assigned body cameras to all patrol lieutenants.

18 And the Department is issuing *PDRD Activated* wristbands to remind officers to
19 activate their body cameras. On his own dime, a sergeant designed the bands and
20 bought them for his squad. Once the Chief found out, she approved buying them for
21 all officers.



1 The Department is also taking other steps. For example, the Department is
 2 exploring technology that tracks when officers un-holster their firearms. The Chief
 3 also ordered that a focus group of supervisors and commanders convene to recommend
 4 how to ensure better communication and coordination between supervisors around
 5 incidents in which force is used or likely to be used. The group will especially dig into
 6 report review and approvals and present their findings by October 31, 2019.

7 Further, as set forth throughout this statement, the Department continues to
 8 work hard to stamp out historical disparities by race.

9 **C. OIG Will Track The Department's Progress**

10 At bottom, in the OIG, the Department has an effective system of checks and
 11 balances. To help confirm the Department's corrective measures hold, the Chief has
 12 requested that OIG annually follow up on this audit. The Department is committed to
 13 introspection and to accepting and correcting any shortcomings OIG finds. The Chief
 14 has made clear that honest, self-analysis is the new norm within the Department and
 15 will remain that way under her watch and into the future.

16

17 **TASK 2—INTERNAL AFFAIRS TIMELINES**

18 Task 2 centers on the idea that “[f]airness to complainants, members/employees
 19 and the public requires that internal affairs investigations be completed in a timely
 20 fashion.” To help achieve that goal, Task 2 provides two things:

21 1. . . OPD shall develop policies regarding timeliness
 22 standards for the completion of Internal Affairs
 23 investigations, administrative findings and recommended
 24 discipline.

25 2. Compliance with these timelines standards shall be
 26 regularly monitored by IAD command and the Department's
 27 command staff. If IAD experiences an unusual proliferation
 28 of cases and/or workload, IAD staffing shall be increased to
 29 maintain timeliness standards.”

30 Task 2 has been inactive for years. The IMT, though, recently looked at Task 2
 31 by reviewing IA cases with findings in April 2019. Dkt. No. 1296, at 2-3, *62nd Report*
 32

1 (July 11, 2019). As for the second part of Task 2, the IMT found that the Department
 2 is regularly monitoring timelines and noted that the Department is increasing its
 3 staffing for Division-level investigations. *Id.* at 3. But the IMT found the Department
 4 to be out of compliance with the first part of Task 2.

5 The Department has timelines to help make sure it completes thorough
 6 investigations and does not miss the opportunity to impose appropriate discipline. To
 7 that end, the Department requires that 85% of Class I and Class II misconduct
 8 investigations be completed within 180 days. Unfortunately, the City significantly
 9 missed that mark in April 2019. *Id.* at 3.

10 This does not point to a future problem. To start with, the backlog is cleared.
 11 The Department identified this issue before the IMT made its finding. And the
 12 Department took important steps to get back on track, such as training and assigning
 13 additional experienced supervisors to review the investigations.

14 At all times, the Department has emphasized high investigatory standards and
 15 has not placed checking-the-box for Task 2 above quality. This in part, the
 16 Department believes, explains the backlog. OIG, though, is auditing this task to
 17 unpack what happened and to help guard against future percentage drops. At first
 18 glance, it looks like the backlog began last year. Lastly, the Department is not aware
 19 the backlog led to the failure to impose appropriate discipline in any case.

20

21 **TASK 5—INTERNAL AFFAIRS COMPLAINT PROCEDURES**

22 Since the last CMC, the IMT reviewed Task 5 once. Dkt. No. 1284, at 6-8, *61st*
 23 *Report* (May 23, 2019). As with the last two times it reviewed Task 5, the IMT noted
 24 that not all subtasks are being actively monitored and the Department remains in
 25 compliance with many of those that are. Dkt. No. 1240, at 14-16, *JCMS* (March 22,
 26 2019). Since July 2018, the Task 5 reviews have been mainly positive. *Id.* And the
 27

1 City has implemented all the Court Investigator's recommendations concerning
 2 subtasks. *Id.*

3 Despite all this, the IMT found the City out of compliance with Task 5 based "on
 4 the provisions of the March 23, 2016 Court Order [concerning IA No. 15-0771] and
 5 several troubling issues noted in this most recent assessment." Dkt. No. 1284, at 8,
 6 61st Report (May 23, 2019). The latter "issues," apparently have to do with the IMT's
 7 differing take on two of 19 cases it reviewed. *Id.*

8 Against that backdrop, the City believes that it is in substantial compliance
 9 with Task 5. Here is a snapshot of the IMT's findings as to the subtasks dealing with
 10 the quality of investigations, which are the key subtasks:

SUBTASK	56TH REPORT	58TH REPORT	61ST REPORT
5.15/ 5.16	The Department gathered all relevant evidence and conducted appropriate follow-up interviews but the IMT disagreed with how the Department assessed the evidence in one of 15 cases.	The Department gathered all relevant evidence, conducted appropriate interviews, and properly assessed the evidence in all 18 cases.	The Department gathered all the relevant evidence, but the IMT disagrees with how the Department assessed the evidence in two of 19 cases.
5.17	"OPD has a sustained history of 100% compliance with this task."	"OPD has a sustained history of 100% compliance with this task."	"OPD has a sustained history of 100% compliance with this task."
5.18/ 5.19	The IMT disagreed with findings in one out of 15 cases.	"We did not disagree with the findings in any of the [18] cases reviewed."	The IMT disagreed with the findings in two of 19 cases.
5.21	The IMT approved of all the administrative closures in the sample.	The IMT approved of all the administrative closures in the sample.	The IMT approved of all the administrative closures in the sample.

1 As this chart shows, the IMT has approved of 94% of the cases it reviewed in the
 2 past three reviews. Going back to 2010, there is a 90% approval rate. All this points
 3 to compliance.

4

5 **TASKS 24 AND 25—FORCE INVESTIGATION AND REPORTING**

6 The Department has been deemed in compliance with Tasks 24 and 25 since
 7 2015. But in November 2018, the Court reactivated the two tasks due to force-
 8 reporting issues that were emerging.

9 The IMT discussed the two tasks in its May 2019 report that came out well
 10 before OIG's *Special Report* on force reporting. As to both tasks, the IMT had the
 11 same thing to say:

12

13 “The Court’s reactivation of Task 25 at a November 2018
 14 Case Management Conference resulted from our serious
 15 concerns with the Department’s handling and investigation
 16 of recent uses of force. It remains to be seen if forthcoming
 17 policy revisions and other changes, prompted by our
 18 involvement and our review of previously unexplained
 19 reductions in reported use of force, will have a positive
 20 outcome on this issue. As a result, OPD is in partial
 21 compliance with this Task.”

22 Dkt. No. 1284, at 13, 16, *61st Report* (May 23, 2019).

23 The Department began correcting this issue after OIG shared its initial findings
 24 concerning its firearm audit in September 2018. And as set forth in the *Office of*
 25 *Inspector General Special Report* section above, the Department critically examined all
 26 these issues, promptly prescribed strong medicine, and set up its own monitoring
 27 system. Among other things, the Department rewrote partially unclear policies that
 28 have been previously revised under the NSA, sent clear messages through the ranks,
 held officers accountable, and further empowered OIG to keep the Department on
 track.

29

30 JOINT CASE MANAGEMENT STATEMENT (C 00-04599 WHO)

TASK 30—EXECUTIVE FORCE REVIEW BOARDS

The IMT has not assessed Task 30 since the last CMC. Three days before the City filed its last statement, the IMT found the City out of compliance based solely on one EFRB, which stemmed from the unfortunate incident involving Joshua Pawlik. Dkt. No. 1238, at 5, *58th Report* (March 19, 2019). Before that, the IMT found that all 17 EFRBs within the prior five years complied with the NSA. See Dkt. No. 1240, at 16-17, *JCMS* (March 22, 2019). In doing so, the IMT consistently praised the EFRBs it observed. *Id.*

First, as the City explained in its last statement, the City firmly believes that the EFRB at hand was of the same ilk. At bottom, the Chief and the IMT differ on whether the EFRB's findings are correct. The CPRA's views are closer to the Chief's and the Police Commission's to the IMT's. At the same time, there is a civil lawsuit placing the reasonableness of the officers' actions at issue. The fact that the Chief and the IMT see the case differently does not mean that the EFRB was deficient.

15 Second, even if the IMT has concerns about certain aspects of the subject EFRB,
16 it is hard to see how those specific parts of one EFRB—all on their own—mean that
17 the City’s EFRB process—as a whole—is out of compliance.

18 | Here is the text of Task 30:

1. An EFRB shall be convened to review the factual circumstances surrounding any Level 1 force, in-custody death, or vehicle pursuit-related death incidents. A firearm discharge at an animal shall be reviewed by the EFRB only at the direction of the Chief of Police. The Board shall have access to recordings and/or transcripts of interviews of all personnel on the scene, including witnesses, and shall be empowered to call any OPD personnel to provide testimony at the hearing.
2. OPD shall continue the policies and practices for the conduct of EFRB, in accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS.

For years, the City has been conducting EFRBs, which, by their very nature, have involved grave, controversial situations. And for years, those EFRBs have gone

1 according to Department policies and the NSA. The City strives for perfection, but it
 2 is not the compliance standard.

3 Third, the City notes here that it has worked extensively to achieve one of the
 4 Board's key deliverables out of the subject EFRB: rewriting the policies on addressing
 5 armed and unresponsive persons, deploying designated arrest teams, and using
 6 armored vehicles.

7 Lastly, the City appreciates how the Court has generously given its time to
 8 observe other proceedings that are important under the NSA. In that spirit, the City
 9 welcomes the Court to attend any future EFRB—without notice.

10

11 **TASK 34—STOP DATA; AND VISION**

12 The City is proud of its robust stop-data work and its emergence as a testbed for
 13 new strategies for stamping out historical inequities. At this point, data is in the
 14 Department's DNA. This is true to the City's broader work around race and equity.
 15 And the Department is excited about its growing work with Race & Equity.

16 **I. RACIAL IMPACT REPORT AND DATA INTEGRITY**

17 In April 2019, the Department published a *Racial Impact Report*. See Ex. F,
 18 *2016-2018 Racial Impact Report*. In 2018, the Department reduced its total stops by
 19 37 percent from the year before, dropping the number from over 30,000 stops to
 20 19,900. For African Americans, there was a 43-percent reduction, lowering the total
 21 from 19,185 stops to 10,874. The City previewed the findings in its last statement.
 22 Dkt. No. 1240, at 18-28, *JCMS* (March 22, 2019). In short, the Department's
 23 intelligence-led strategies and risk management are making a big difference. *Id.*

24 The data's integrity, moreover, is sound. The Department checked stop data
 25 against dispatch data. When an officer stops someone, the officer calls the dispatch
 26 center to put out her location. That is vital to officer safety. The stop data lined up
 27 with the dispatch data for those stops.

1 **II. STANFORD RECOMMENDATIONS**

2 The Department has implemented 47 of Stanford's 50 recommendations. Here
 3 are the three that remain and their status:

4 NO.	5 RECOMMENDATION	6 STATUS
7 11	8 Invest in the development of a 9 BWC early-warning system.	10 VISION will incorporate body-camera 11 footage that supervisors can access 12 through a link and review without delay. 13 This recommendation will be in place once 14 VISION is online.
15 12	16 Build a stop data dashboard.	17 The dashboards have been designed and 18 previewed for the IMT and Plaintiffs' 19 lawyers. This, too, will be in place once 20 Vision is online.
21 17	22 Hire a data manager.	23 The City has interviewed viable candidates 24 and will soon make its final selection. The 25 manager will work directly with OPD 26 leadership and supervisors to collect the 27 best data for managing risk, make sure its 28 reliable, and maximize its use.

14 The Department is thus on the verge of fully implementing the
 15 recommendations. And the fruitful collaboration with Stanford will continue. Among
 16 other things, the Stanford team and Department leaders are creating next-level risk
 17 management slides. The two are also folding AB 953 data into the Department's self-
 18 oversight. Other joint work centers on understanding what dispatch data adds to
 19 stop-data analysis.

20 **III. GENERAL ORDER R-02**

21 The City has a freshly minted policy on searching people on probation and
 22 parole. Ex. G, *General Order R-02*. The new, data-driven policy is widely recognized
 23 as ahead of the curve. All that is left is for the City to invite and consider feedback
 24 from the OPOA.

1 **IV. CRITICAL ANALYSIS OF DISPARTIES**

2 The Department continues to perfect the way it probes disparities at squad and
 3 officer levels. To that end, the Department has folded in detailed, area risk review
 4 into its larger risk management reviews.

5 With each new meeting, the Department sharpens its focus and scrutiny. The
 6 Department carefully reviews deliverables from prior meetings and the progress of
 7 officers who are subject to intervention or monitoring. As the City noted in its last
 8 statement, the IMT's report highlighted the Department's "extensive review of
 9 'deliverables'" the risk management team provided to Area Commanders. Dkt. No.
 10 1240, at 21. And it had no criticism of the Department's "drill down" to the officer
 11 level. *Id.*

12 Finally, the City appreciates the Court taking the time to observe a risk
 13 management meeting in May 2019 and welcomes future visits.

14 **V. VISION (FORMERLY PRIME)**

15 The City aimed to have VISION up and running in July 2019 but gave itself
 16 until September 2019, mindful of delays that are inherent in all the design, building,
 17 and data conversion this complex project entails. October 2019 is the new target.
 18 Unfortunately, more time is needed to finish cleaning up data that spans back to the
 19 mid-2000s.

20 As the system rounds into shape, it is plain to see that all the planning and
 21 efforts will pay off. At the last site visit, the Department previewed the dashboards
 22 that will allow supervisors and commanders to see key data in real time. The City
 23 would also like to preview them for the Court in the near future.

24 Finally, the City is devoting even more resources to ensuring the Department
 25 has advanced risk-management technology and makes the most of it. For instance, in
 26 addition to the data manager mentioned under the Stanford recommendations, the
 27
 28

1 City has already hired a new Deputy CIO whose sole job is to support the Public
 2 Safety IT needs. That specialist is currently helping complete VISION.

3 **VI. ADDITIONAL EFFORTS**

4 Besides all these efforts, the Department continues to try out new, thoughtful
 5 strategies. For instance, the Chief is piloting a beat-integrity program in Area 2. The
 6 idea is that officers should stop people for discretionary reasons only in the beats to
 7 which the officers are assigned. There is not yet enough data to draw broad
 8 conclusions. But the early results are promising, showing overall disparity reductions
 9 in Area 2.

10 Another example concerns traffic stops. The Chief has made clear that the
 11 Department places little value on low-level equipment stops unless they are tied to a
 12 crime. Yet another, the Department is tracking officers' community engagement and
 13 reviewing that data with the officers.

14

15 **TASK 45—CONSISTENCY OF DISCIPLINE POLICY**

16 Since the last CMC, the IMT assessed Task 45 once. Dkt. No. 1296, at 12-14,
 17 *62nd Report* (July 19, 2019). As in 59th Report, the IMT found the Department is
 18 doing what the task requires: documenting and maintaining an adequate system for
 19 tracking discipline and corrective action; consistently imposing discipline; and
 20 appropriately training *Skelly* officers. *Id.* In addition, the City has implemented all
 21 the Court Investigator's recommendations stemming from IAD No. 15-0771. *See* Dkt.
 22 No. 1240, at 25-26, *JCMS* (March 22, 2019).

23 Yet the IMT again found the City in partial compliance—without explanation.
 24 Dkt. No. 1296, at 12-14, *62nd Report* (July 11, 2019).

25 In its last statement, the City respectfully sought guidance on what steps are
 26 needed to achieve full compliance. *Id.* The City respectfully renews that request or
 27 seeks to be deemed in compliance.

CONCLUSION

Against that backdrop, the City sees itself at the tip of the spear pointed towards combating historical inequities in law enforcement. Change has not come easy, but it is happening every day within the Department. The City—including the Department—has strong, effective leaders who are steering the Department closer each day to equitable, constitutional policing. Just a few months ago, Plaintiffs lauded the City’s gains, especially around equity and accountability. Dkt. No. 1266, at 4, Opp. to Intervention Motion (April 30, 2019).

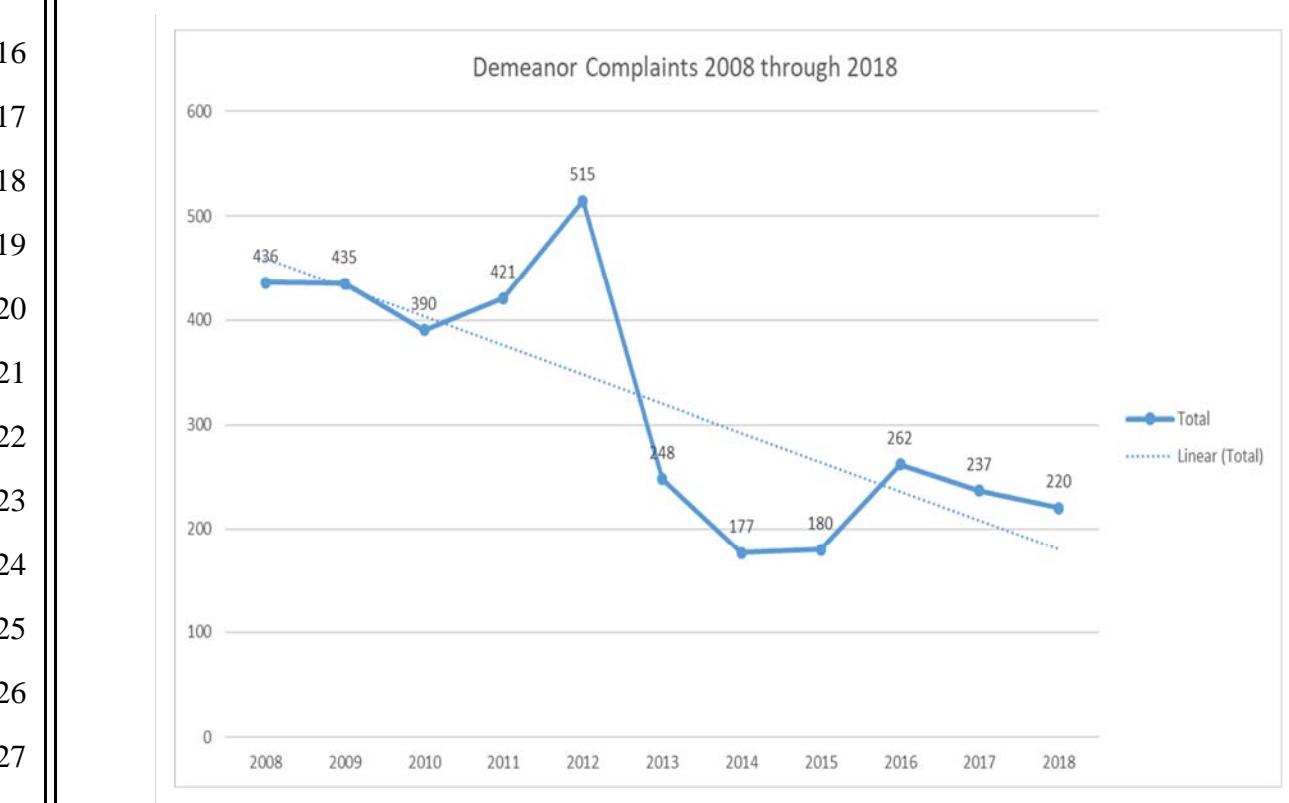
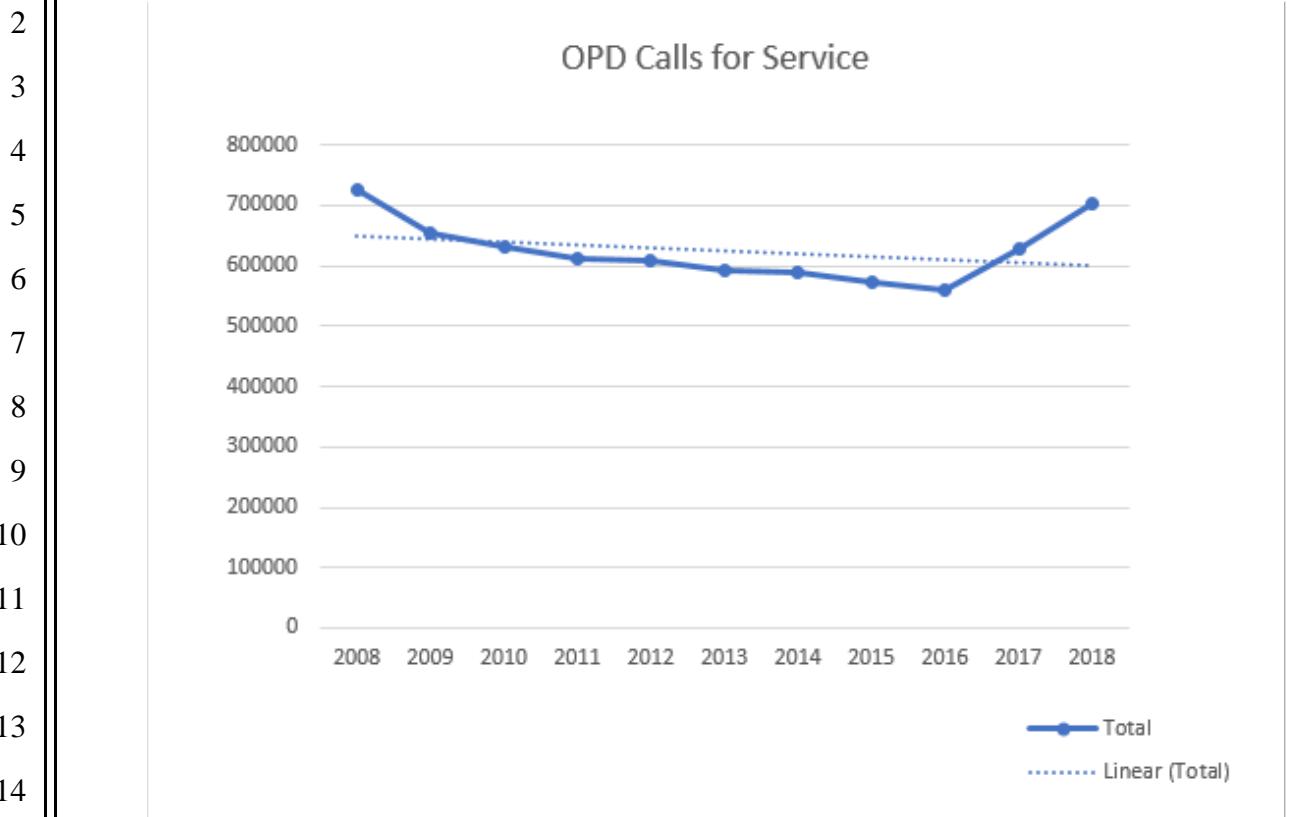
Going forward, the City seeks guidance on the compliance metrics for those tasks the IMT and Compliance Director have deemed out of compliance.

Further, the City hopes that the IMT and Compliance Director will allow interim leadership assignments to become permanent. This is vital to sustaining the City’s gains and preventing crime, which is pivoting upward. Currently, there are 15 such assignments.

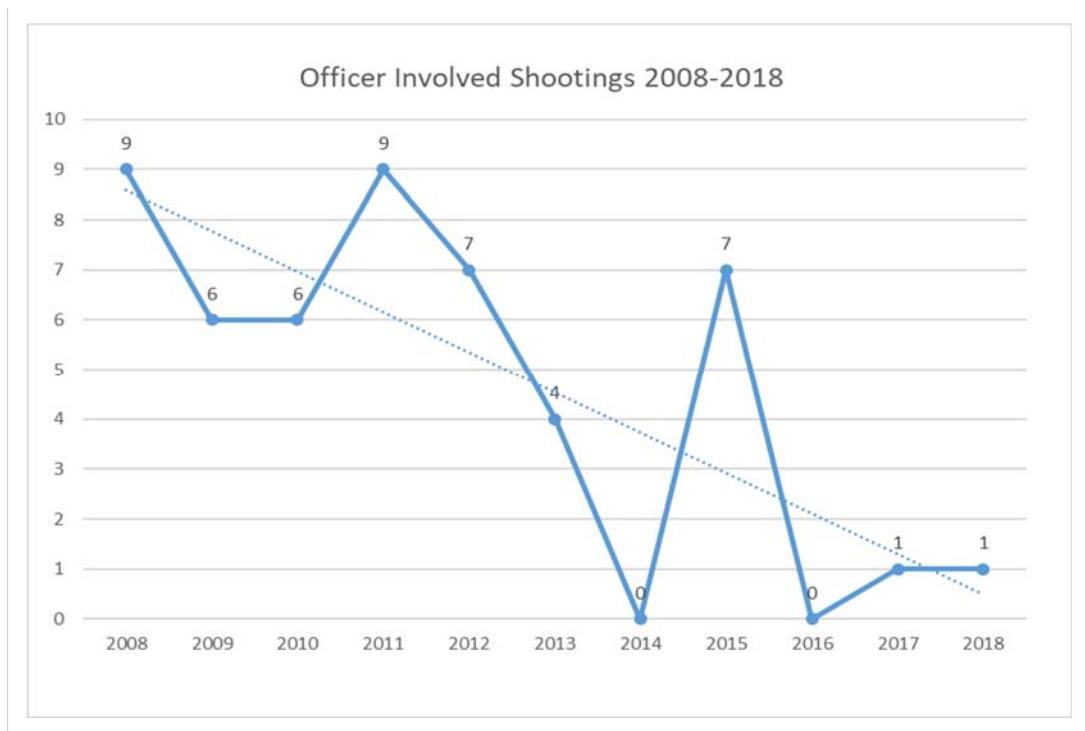
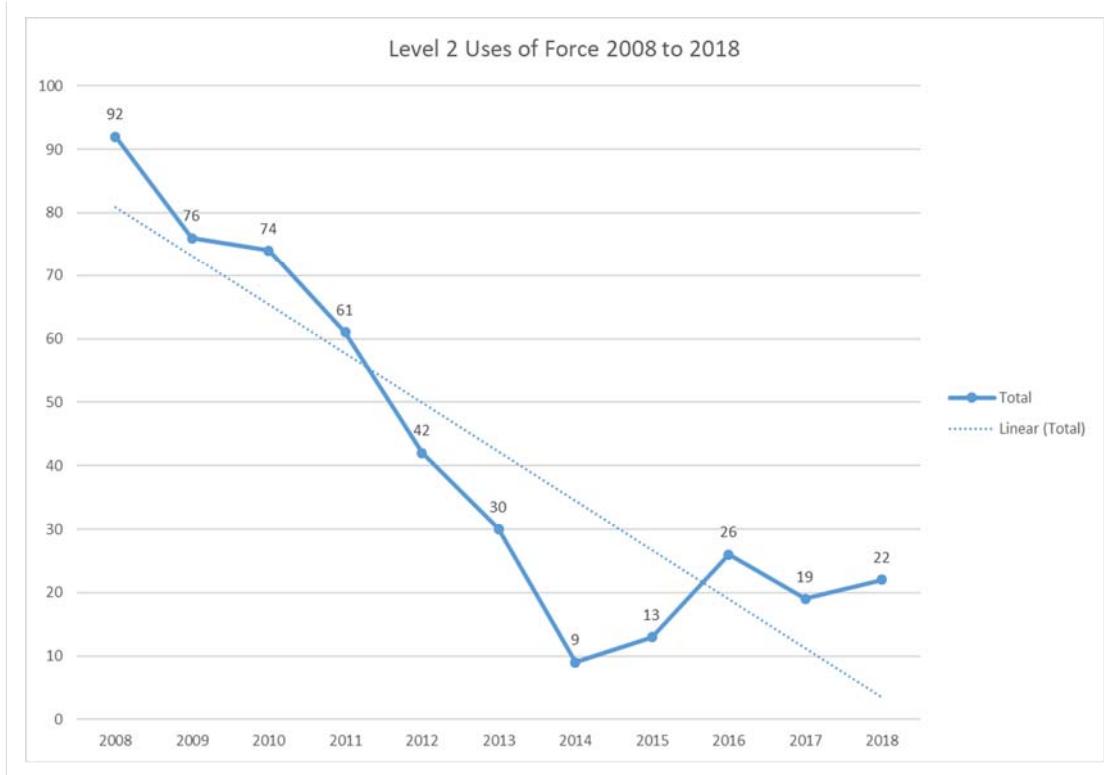
At the CMC, the following City leaders will be prepared to provide any additional information the Court seeks:

TOPIC	CITY LEADER
The Department’s overall progress and cultural transformation	➤ Chief Anne Kirkpatrick
Task 2	➤ Captain Sekou Millington
Task 5	➤ Captain Sekou Millington
Tasks 24 and 25 and OIG’s Special Report	➤ Assistant Chief Darren Allison ➤ Inspector General Kristin Burgess
Task 30	➤ Assistant Chief Darren Allison
Task 34 and Race & Equity Work	➤ Deputy Chief Leronne Armstrong ➤ Captain Frederick Shavies
VISION	➤ Director Virginia Gleason

1 Finally, the City concludes with examples of lasting cultural change over time:







OPOA'S STATEMENT

2 Intervener, Oakland Police Officers Association ("OPOA" & "Association")
3 continues to actively participate with the City of Oakland ("City"), Oakland Police
4 Department ("Department") as well as Plaintiffs' counsel on various NSA tasks and
5 related matters. The OPOA will continue to collaborate with the parties to achieve
6 full compliance with the NSA.

Respectfully submitted,

Dated: August 14, 2019 BARBARA J. PARKER, City Attorney
DAVID A. PEREDA, Special Counsel

By: /s/ David Pereda*
Attorneys for Defendants
CITY OF OAKLAND

Dated: August 14, 2019 JOHN L. BURRIS
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Dated: August 14, 2019 JAMES B. CHANIN
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OAKLAND POLICE OFFICERS ASSOCIATION

*Per Local Rule 5-1(i)(3), the filer attests that concurrence in the filing of the document has been obtained from each of the other Signatories.